IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Patent Application of:
Hideyuki SAKAIDA

Application No.: 09/397,920	Confirmation No.: 9398
Filed: September 17, 1999	Art Unit: 2625
For: IMAGE CONVERSION METHOD AND APPARATUS, IMAGE CONVERSION PROCESSING PROGRAM, AND RECORDING MEDIUM ON WHICH IMAGE CONVERSION PROCESSING PROGRAM IS RECORDED	Examiner: Y. J. Couso

APPEAL BRIEF TRANSMITTAL FORM

MS Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

09/02/2005 JADDO1   00000016 09397920

Transmitted herewith is an Appeal Brief on behalf of the Appellants in connection with the above-identified application.

☐ The enclosed document is being transmitted via the Certificate of Mailing provisions of 37 C.F.R. § 1.8.

A Notice of Appeal was filed on **July 1, 2005**.

☐ Applicant claims small entity status in accordance with 37 C.F.R. § 1.27.

Birch, Stewart, Kolasch & Birch, LLP   DRA/HNS/cl

The fee has been calculated as shown below:

☐   Extension of time fee pursuant to 37 C.F.R. §§ 1.17 and 1.136(a) - $none.

☒   Fee for filing an Appeal Brief - $500.00 (large entity).

☒   Check(s) in the amount of $500.00 is(are) attached.

☐   Please charge Deposit Account No. 02-2448 in the amount of $500.00. A triplicate copy of this sheet is attached.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Dated: September 1, 2005   Respectfully submitted,

By_____
D. Richard Anderson
Registration No.: 40,439
BIRCH, STEWART, KOLASCH & BIRCH, LLP
8110 Gatehouse Rd
Suite 100 East
P.O. Box 747
Falls Church, Virginia 22040-0747
(703) 205-8000
Attorney for Applicant

Attachment(s)

FEE TRANSMITTAL

For FY 2005

Effective on 12/08/2004.
Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

Complete if Known	
Application Number	09/397,920-Conf. #9398
Filing Date	September 17, 1999
First Named Inventor	Hideyuki SAKAIDA
Examiner Name	Y. J. Couso
Art Unit	2625
Attorney Docket No.	1982-0136P

☐ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($) 500.00

METHOD OF PAYMENT (check all that apply)

[x] Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☐ Deposit Account   Deposit Account Number: 02-2448   Deposit Account Name: Birch, Stewart, Kolasch & Birch, LLP

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below

☐ Charge fee(s) indicated below, **except for the filing fee**

[x] Charge any additional fee(s) or underpayment of fee(s) under 37 CFR 1.16 and 1.17

[x] Credit any overpayments

FEE CALCULATION

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
Application Type	Fee ($)	Small Entity Fee ($)	Fee ($)	Small Entity Fee ($)	Fee ($)	Small Entity Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	_____
Design	200	100	100	50	130	65	_____
Plant	200	100	300	150	160	80	_____
Reissue	300	150	500	250	600	300	_____
Provisional	200	100	0	0	0	0	_____

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims	Extra Claims	Fee ($)	Fee Paid ($)
22 - 22 = _____	x _____	= _____	

Multiple Dependent Claims

Fee ($)	Fee Paid ($)

Indep. Claims	Extra Claims	Fee ($)	Fee Paid ($)
14 - 14 = _____	x _____	= _____	

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets	Extra Sheets	Number of each additional 50 or fraction thereof	Fee ($)	Fee Paid ($)
_____ - 100 = _____	/50 _____	(round up to a whole number) x	_____	= _____

4. OTHER FEE(S)

Fees Paid ($)

Non-English Specification, $130 fee (no small entity discount)

Other (e.g., late filing surcharge): Appeal Brief filing fee   500.00

SUBMITTED BY

Signature		Registration No. (Attorney/Agent)	40,439	Telephone	(703) 205-8000
Name (Print/Type)	D. Richard Anderson			Date	September 1, 2005

DRA/HNS/cl

O I P E
SEP 0 1 2005
PATENT & TRADEMARK OFFICE

Appl No: 09/397,920
Attorney Docket: 1982-0136P

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants:	H. SAKAIDA	Conf.:	9398
Appl No:	09/397,920	Art Unit:	2625
Filed:	September 17, 1999	Examiner:	Y. Couso
For:	IMAGE CONVERSION METHOD AND APPARATUS, IMAGE CONVERSION PROCESSING PROGRAM AND RECORDING MEDIUM ON WHICH IMAGE CONVERSION PROCESSING PROGRAM IS RECORDED		

APPEAL BRIEF ON BEHALF OF APPELLANT: Hideyuki SAKAIDA

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

September 1, 2005

Sir:

This appeal is from the decision of the Examiner dated January 5, 2005 finally rejecting claims 1, 3, 14, 16 and 18, which are reproduced as an Appendix to this brief.

09/02/2005 JADD01   00000016 09397920
01 FC:1402   500.00 OP

TABLE OF CONTENTS

I.   Real Party in Interest

The real party in interest is Fuji Photo Film Co., Ltd. of Japan.

II.   Related Appeals and Interferences

There are no other appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III.   Status of Claims

Claims 1-22 are pending in this application. Of these, claims 1, 3, 14, 16 and 18 are the subjects of this appeal. Claims 2, 4-13, 15, 17, and 19-22 have been indicated to be allowable.

IV.   Status of Amendments

Subsequent to the Final Office Action of January 5, 2005, a Rule 116 Reply was filed on April 1, 2005 and a Supplemental Reply was filed on July 1, 2005. No claims were amended subsequent to the Final Office Action. *Copy of the Final Office Action attached.*

V.   Summary of the Claimed Subject Matter

The independent claims on appeal are claims 1, 14 and 18. Claims 3 and 16 depend from independent claims 1 and 14, respectively.

A.   Claim 1

Claim 1 is directed toward an image conversion method in which image data represented by a required number of pixels is obtained from original image data represented by a predetermined number of pixels.   In this method, a first image conversion is performed on the original image data. The conversion results in an intermediate image.   After the first conversion, the number of pixels in the intermediate image is half of the number of pixels in the original image.   *See e.g. Specification, page 46, lines 9-12.*

This process of halving the number of pixels is repeated for each intermediate image to generate subsequent intermediate images until an intermediate image is obtained that has a number of pixels that is close to the required number of pixels. *See e.g. Specification, page 46, lines 9-12.*

Then, a final (or second) image conversion takes place to convert the last intermediate image to an image with the required number of pixels. *See e.g. Specification, page 46, lines 12-16.*   For example, the final image conversion may take place instead of another reduction by half if another reduction by half would reduce the resulting intermediate image to have less than the required number of pixels.

An exemplary result of the method as claimed in claim 1 is illustrated in Figure 6A of the present disclosure. As shown, it is desired to reduce an original image with dimensions height H_0 and width W_0 (in pixels). Thus, the number of pixels of the original image is $H_0 \times W_0$. It is desired to reduce original image to a final image with height H_X and width W_X (total number of pixels $H_X \times W_X$).

After the first image conversion, the resulting intermediate image has a height of H_1 and width of W_1. Thus, the number of pixels of the first intermediate image is $H_1 \times W_1$. This process is repeated on the intermediate image to produce subsequent intermediate images.

Note that the number of image pixels is reduced by half after each iteration of the image conversion step. In other words, $H_1 \times W_1$ is half of $H_0 \times W_0$, $H_2 \times W_2$ is half of $H_1 \times W_1$, and so on. As an example, the number of pixels may be reduced in half in each iteration if both height and width of the previous image is reduced by a factor of $\sqrt{2}$.

Claim 1 also recites, "carrying out a first, initial image conversion, **without previously enlarging** which controls said original image data to said predetermined number of pixels." *Emphasis added.*

B.   Claim 14

Claim 14 is directed toward an image conversion processing program which allows an image conversion processing to take place, for converting original image data represented by a predetermined number of pixels to image data representing an image by a set number of pixels.

The program allows execution, by a computer for example, to perform the method to repeatedly carry out the image conversion so that the original image data to is converted to a final image with a required number of pixels.   In each conversion iteration resulting in an intermediate image, the number of pixels is reduced by half.

Once an intermediate image data with number of pixels that is close to the required number of pixels is achieved, a final image conversion is performed to convert the last intermediate image to the final image with the required number of pixels.

Again, the original image data is not enlarged before the image reductions take place.

Some features of claim 14 are similar to the features of claim 1.

C.   Claim 18

Claim 14 is directed toward an image conversion method in which image data represented by a required number of pixels is obtained from

original image data represented by a predetermined number of pixels.

Claim 18 includes features similar to the ones recited for claim 14.

VI.   Grounds of Rejection to be Reviewed on Appeal

In the Final Office Action dated January 5, 2005, claims 1, 3, 14, 16 and

18 were rejected under 35 USC 102(b) as allegedly being anticipated by

Hirabayashi et al. (USP 5,680,225) (hereinafter "Hirabayashi").

VII. Arguments

Applicant will demonstrate that the claims are distinguishable from the

cited prior art of record.

A.   Claim 1

i.   Hirabayashi Does Not Teach Or Suggest Obtaining Image Data With A Number Of Pixels Which Is One-Half Of The Number Of Pixels For An Image Conversion

Claim 1 recites, in part, "carrying out a first image conversion by

obtaining, by a first interpolation calculation, image data represented by a

number of pixels which is **one-half** of the predetermined number of pixels,

from the original image data represented by the predetermined number of

pixels." *Emphasis added.* Hirabayashi fails to teach or suggest at least this feature.

Hirabayashi is directed toward a method of reducing an image expressed by data for every pixel. *See Hirabayashi, column 1, lines 5-7.* According to Hirabayashi, original image data is initially enlarged and then the enlarged image is repeatedly reduced as necessary. *See e.g., Figures 7A – 7D.*

In the Final Office Action, the Examiner alleged that Figure 7C of Hirabayashi teaches the feature "carrying out a first image conversion by obtaining, by a first interpolation calculation, image data represented by a number of pixels which is one-half of the predetermined number of pixels, from the original image data represented by the predetermined number of pixels."

However, as illustrated in Figure 7C, the image after the first reduction is reduced by half in **both horizontal and vertical directions** (from 16 to 8 pixels in each direction). Since the reduction is half in both directions, the **total reduction factor is four (4)**. In other words, the number of pixels remaining after the first reduction is a **fourth** (from 256 to 64 pixels), **not** a half as recited. *Compare Figures 7B and 7C of Hirabayashi.*

Clearly, contrary to the Examiner's allegation, Hirabayashi cannot be relied upon to teach or suggest the feature of "carrying out a first image conversion by obtaining, by a first interpolation calculation, image data

represented by a number of pixels which is one-half of the predetermined number of pixels, from the original image data represented by the predetermined number of pixels."

Similarly, Hirabayashi cannot be relied upon to teach or suggest the feature of "preparing an intermediate image by **repeatedly carrying out** the first, initial image conversion at a rate of **one-half** of the number of pixels, until a number of pixels close to the required number is reached." *Emphasis added.*

As illustrated in Hirabayashi, after the second reduction takes place, the number of pixels remaining is only a fourth of the image after the first reduction (from 64 to 16). *Compare Figures 7C and 7D of Hirabayashi.*

ii. Examiner Cannot Ignore Recited Feature

Claim 1 recites, in part, "without previously enlarging which controls said original image data to said predetermined number of pixels." In the Final Office Action, the Examiner alleged that the recited feature is a negative limitation. *See Final Office Action, page 2, lines 5-7.* The Examiner went on to allege that the reference still read on <u>every positive step</u> recited in the claim. *Emphasis added; see Final Office Action, page 2, line 17.* In other words, the Examiner simply ignored the recited feature of "without previously enlarging

which controls said original image data to said predetermined number of pixels."

This is improper. The MPEP clearly indicates that there is nothing inherently ambiguous or uncertain about negative limitations. So long as the boundaries of the patent protection sought are set forth definitely, albeit negatively, the claim complies with the requirements of 35 USC 112, second paragraph. *See MPEP Section 2173.05(i)*. Indeed, the MPEP further indicates that a claim, which recites a negative limitation to exclude the characteristics of the prior art product, can be considered definite. *See MPEP 2173.05(i)*.

Thus, even if the recited feature can be considered to be a negative limitation, the Examiner should have considered the entirety of the claims, including the alleged negative limitation. In other words, the Examiner improperly ignored the recited feature.

iii. Hirabayashi Cannot Teach or Suggest The Feature of

Without Previously Enlarging Original Image Data

As noted above, the Examiner improperly ignored the feature of "without previously enlarging which controls said original image data to said predetermined number of pixels."

When this recited feature is properly considered, it is clear that claim 1 is distinguishable over Hirabayashi. Indeed, in the Office Action dated May 12,

2004, the Examiner stated "it is true that **Hirabayashi discloses enlarging the original image**." *Emphasis added; See May 12, 2004 Office Action, page 2, lines 11-12.* Thus, even by the Examiner's own admission, Hirabayashi does not teach or suggest this recited feature. Indeed, Hirabayashi explicitly teaches away from the claimed invention.

The Examiner indicated that the step of enlarging an input image as disclosed in Hirabayashi is not relied upon. *See Final Office Action, page 2, lines 16-17.* However, as demonstrated above, this is improper. As long as the feature is recited in the claims, to properly reject a claim under 35 USC 102, the feature must be present in the reference. As indicated above and as admitted by the Examiner, Hirabayashi cannot be relied upon to teach or suggest the feature.

The Examiner stated that the enlarged image in Hirabayashi is not treated as the original image as claimed. Instead, the enlarged image (*see Hirabayashi, Figure 7B*) is treated to be equivalent to the original image as claimed.

Hirabayashi, however, clearly discloses that the enlarged image (*see Figure 7B*) is **not** the original image. Instead, as the label clearly suggests, the enlarged image is an enlargement of the original image (*see Figure 7A*). For the Examiner to completely disregard the teachings of Hirabayashi is unreasonable.

Further, if the enlarged image is (unreasonably) taken to be equivalent to the original image as claimed, it is clear that the enlarged image in Hirabayashi clearly underwent enlargement. As such, even under the Examiner's unreasonable interpretation, Hirabayashi still teaches away from the recited feature.

In short, Hirabayashi cannot be relied upon to teach or suggest the feature of "without previously enlarging which controls said original image data to said predetermined number of pixels."

iv.   Claim Language Sufficient

In the Advisory Action dated July 21, 2005, the Examiner alleged that there was nothing in the claim language to distinguish the number of pixels in an image from the image width or height. *Advisory Action attached.*

The Examiner mischaracterizes the Appellant's argument. Appellant argued that Hirabayashi fails to teach or suggest the feature of obtaining image data with a number of pixels that is one-half of the number of pixels for an image conversion of the original image data. In Hirabayashi, the number of pixels of the original image (or the enlarged image data under the Examiner's interpretation) is calculated by multiplying the height and the width dimensions.

As noted above, Hirabayashi clearly discloses reducing by the number of pixels in both the horizontal and vertical directions for each image reduction.

Then to properly determine the amount of reduction of number of pixels as disclosed in Hirabayashi, the reduction in both directions must be considered. When the reductions in both dimensions are properly considered, the number of pixels remaining after the conversion as disclosed in Hirabayashi is not one-half as recited in the claim.

Claim 1 recites, "one-half of the predetermined number of pixels, from the **original image data represented by the predetermined number of pixels.**" *Emphasis added.* In other words, the reduction of pixels is relative to the **number of pixels of the original image data.** Clearly, the claim language is sufficient.

B.   Claim 14

Claim 14 recites, in part "a first step in which a first, initial image conversion, **without previously enlarging** which controls said original image data to said predetermined number of pixels, is effected by obtaining, by interpolation calculation, image data represented by pixels of a number which is **one-half of the predetermined number of pixels from the original image data** represented by the predetermined number of pixels, and an **intermediate image is prepared by repeatedly effecting the first, initial image conversion to one-half until a number of pixels** close to a required number of pixels is reached."

Thus, arguments similar to those made with respect to claim 1 are also applicable for claim 14.

C.   Claim 18

Claim 18 recites, in part "repeatedly carrying out a first, initial image conversion, **without previously enlarging** which controls said original image data to said predetermined number of pixels, which obtains, by interpolation calculation and from initial image data, subsequent image data represented by a number of pixels which is **one-half of the number of pixels of the initial image data**, said first, **initial image conversion being repeatedly carried out** from the original image data until the number of pixels of image data obtained by the first, initial image conversion is near the required number of pixels."

Thus, arguments similar to those made with respect to claims 1 and 14 are also applicable for claim 18.

VIII.   Conclusion

For the reasons specifically set forth above, the outstanding rejections set forth in the Final Office Action should be REVERSED.
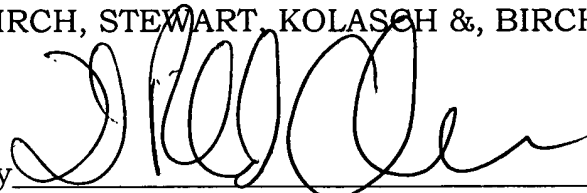
If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit

Account No. 02-2448 for any additional fees required under 37 C.F.R. §§ 1.16

or 1.17; particularly, extension of time fees.

Respectfully submitted,

BIRCH, STEWART, KOLASCH &, BIRCH, LLP

By

D. Richard Anderson
Reg. No. 40,439

DRA/HNS/cl   P.O. Box 747
1982-0136P   Falls Church, VA 22040-0747
                              (703) 205-8000

CLAIMS APPENDIX

The Appealed Claims

1.   An image conversion method in which image data represented by a required number of pixels is obtained from original image data represented by a predetermined number of pixels, comprising the steps of:

carrying out a first, initial image conversion, without previously enlarging which controls said original image data to said predetermined number of pixels, by obtaining, by a first interpolation calculation, image data represented by a number of pixels which is one-half of the predetermined number of pixels, from the original image data represented by the predetermined number of pixels;

preparing an intermediate image by repeatedly carrying out the first, initial image conversion at a rate of one-half of the number of pixels, until a number of pixels close to the required number is reached; and

carrying out a second image conversion by obtaining, from the intermediate image, image data represented by the required number of pixels.

3.   An image conversion method according to claim 1, wherein the intermediate image has a number of pixels which is greater than and closest to the required number of pixels.

14. An image conversion processing program which allows image conversion processing, for converting original image data represented by a predetermined number of pixels to image data representing an image by a set number of pixels, to be executed by a computer, comprising:

a first step in which a first, initial image conversion, without previously enlarging which controls said original image data to said predetermined number of pixels, is effected by obtaining, by interpolation calculation, image data represented by pixels of a number which is one-half of the predetermined number of pixels from the original image data represented by the predetermined number of pixels, and an intermediate image is prepared by repeatedly effecting the first, initial image conversion to one-half until a number of pixels close to a required number of pixels is reached; and

a second step in which a second image conversion is effected by obtaining image data represented by a required number of pixels from the intermediate image prepared in said first, initial step.

16. A recording medium on which the image conversion processing program according to claim 14 is recorded.

18.　An image conversion method in which image data represented by a required number of pixels is obtained from original image data represented by a predetermined number of pixels, comprising the steps of:

repeatedly carrying out a first, initial image conversion, without previously enlarging which controls said original image data to said predetermined number of pixels, which obtains, by interpolation calculation and from initial image data, subsequent image data represented by a number of pixels which is one-half of the number of pixels of the initial image data, said first, initial image conversion being repeatedly carried out from the original image data until the number of pixels of image data obtained by the first, initial image conversion is near the required number of pixels; and

obtaining, from image data of the number of pixels near the required number of pixels, image data represented by the required number of pixels.

EVIDENCE APPENDIX

The Evidence Appendix includes:

- Final Office Action dated January 5, 2005; and

- Advisory Action dated July 21, 2005.

UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/397,920	09/17/1999	HIDEYUKI SAKAIDA	1982-0136P	9398

7590   01/05/2005

BIRCH STEWART KOLASCH & BIRCH LLP
PO BOX 747
FALLS CHURCH, VA 220400747

EXAMINER
COUSO, YON JUNG

ART UNIT	PAPER NUMBER
2625	

DATE MAILED: 01/05/2005

DOCKETED

Final / NOA
01/05/05

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Office Action Summary	09/397,920	SAKAIDA, HIDEYUKI
	Examiner	Art Unit	
	Yon Couso	2625	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.
- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
  Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on <u>30 July 2004</u>.

2a) ☒ This action is **FINAL**.   2b) ☐ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) *1-22* is/are pending in the application.

   4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) *2,4-13,15,17 and 19-22* is/are allowed.

6) ☒ Claim(s) *1, 3, 14, 16, 18* is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

   Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

   Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

   a)☐ All b)☐ Some * c)☐ None of:

   1.☐ Certified copies of the priority documents have been received.

   2.☐ Certified copies of the priority documents have been received in Application No. _____.

   3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

   * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

1.   Applicant's arguments filed July 30, 2004 have been fully considered but they are

not persuasive.

The applicant argues that the Hirayabashi does not teach carrying out a first,

initial image conversion, without previously enlarging which controls said original image

data to said predetermined number of pixels. The newly added limitation, "without

previously enlarging which controls said original image data to said predetermined

number of pixels" is a negative limitation. Hirayabashi clearly discloses initial image

conversion by obtaining, by first interpolation calculation, image data represented by a

number of pixels which is one-half of the predetermined number of pixels, from the

original image data represented by the predetermined number of pixels (figure 7c);

preparing an intermediate image by repeatedly carrying out the first, initial image

conversion at a rate of one-half of the number of pixels, until a number of pixels close to

the required number is reached (figure 7d); and carrying out a second image conversion

by obtaining, from the intermediate image, image data represented by the required

number of pixels (406 in figure 6 and column 5, lines 48-54).

Note that the examiner is not relying on the step of enlarging an input image.

However, the reference still read on every positive step recited in the claim by <u>treating

the enlarged image in Hirayabashi as an initial original image</u>.

2.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public
use or on sale in this country, more than one year prior to the date of application for patent in the United
States.

Claims 1, 3, 14, 16 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Hirabayashi et al.

The arguments advanced in paragraph 1 above as to the applicability of the reference are incorporated herein.

Hirabayashi teaches an image conversion method in which image data represented by a required number of pixels is obtained from original image data represented by a predetermined number of pixels (figure 7b), comprising the steps of: carrying out a first, initial image conversion, without previously enlarging which controls the original image data to the predetermined number of pixels, by obtaining, by first interpolation calculation, image data represented by a number of pixels which is one-half of the predetermined number of pixels, from the original image data represented by the predetermined number of pixels (figure 7c); preparing an intermediate image by repeatedly carrying out the first, initial image conversion at a rate of one-half of the number of pixels, until a number of pixels close to the required number is reached (figure 7d); and carrying out a second image conversion by obtaining, from the intermediate image, image data represented by the required number of pixels (406 in figure 6 and column 5, lines 48-54).

Hirayabashi teaches wherein the intermediate image has a number of pixels, which is greater than and closest to the required number of pixels (figure 7c).

3.   Claims 2, 4-13, 15, 17, 19- 22 are allowed.

4.   **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
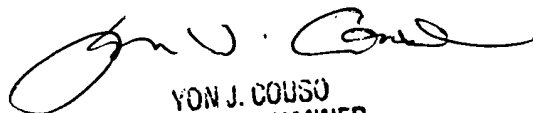
A shortened statutory period for reply to this final action is set to expire THREE

MONTHS from the mailing date of this action. In the event a first reply is filed within

TWO MONTHS of the mailing date of this final action and the advisory action is not

mailed until after the end of the THREE-MONTH shortened statutory period, then the

shortened statutory period will expire on the date the advisory action is mailed, and any

extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later

than SIX MONTHS from the mailing date of this final action.

5.   Any inquiry concerning this communication or earlier communications from the
examiner should be directed to Yon Couso whose telephone number is (703) 305-4779.
The examiner can normally be reached on Monday through Friday from 8:30 to 5:00.
        If attempts to reach the examiner by telephone are unsuccessful, the examiner's
supervisor, Bhavesh Mehta, can be reached on (703) 308-5246. The fax phone number
for the organization where this application or proceeding is assigned is 703-872-9306.
        Information regarding the status of an application may be obtained from the
Patent Application Information Retrieval (PAIR) system. Status information for
published applications may be obtained from either Private PAIR or Public PAIR.
Status information for unpublished applications is available through Private PAIR only.
For more information about the PAIR system, see http://pair-direct.uspto.gov. Should
you have questions on access to the Private PAIR system, contact the Electronic
Business Center (EBC) at 866-217-9197 (toll-free).

YJC
January 4, 2005

YON J. COUSO
PRIMARY EXAMINER

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/397,920	09/17/1999	HIDEYUKI SAKAIDA	1982-0136P	9398

7590 07/21/2005

BIRCH STEWART KOLASCH & BIRCH LLP
PO BOX 747
FALLS CHURCH, VA 220400747

DOCKETED

Appeal Brief
due
9/1/05

EXAMINER
COUSO, YON JUNG

ART UNIT	PAPER NUMBER
2625	

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

	Application No.	Applicant(s)
Advisory Action ***Before the Filing of an Appeal Brief***	09/397,920	SAKAIDA, HIDEYUKI
	Examiner	Art Unit	
	Yon Couso	2625	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED <u>4/1/05, 7/1/05</u> FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☐ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

   a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.

   b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

     Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

<u>NOTICE OF APPEAL</u>

2. ☒ The Notice of Appeal was filed on <u>7/1/05</u>. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

<u>AMENDMENTS</u>

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will <u>not</u> be entered because

   (a)☐ They raise new issues that would require further consideration and/or search (see NOTE below);

   (b)☐ They raise the issue of new matter (see NOTE below);

   (c)☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or

   (d)☐ They present additional claims without canceling a corresponding number of finally rejected claims.
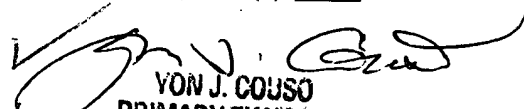
     NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).

5. ☐ Applicant's reply has overcome the following rejection(s): _____.

6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).

7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

   The status of the claim(s) is (or will be) as follows:

   Claim(s) allowed: <u>7</u>____.

   Claim(s) objected to: _____.

   Claim(s) rejected: _____.

   Claim(s) withdrawn from consideration: _____.

<u>AFFIDAVIT OR OTHER EVIDENCE</u>

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will <u>not</u> be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).

9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will <u>not</u> be entered because the affidavit or other evidence failed to overcome <u>all</u> rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).

10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

<u>REQUEST FOR RECONSIDERATION/OTHER</u>

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: <u>The applicant argues that the Hirayabashi reduces number of pixel by half in both horizontal and vertical directions. The examiner noted that not only this point of arguments were never presented before, but also there is nothing in the claim language to distinguish the number of pixels are intended for area, not the length of width or height. The number of pixel in the claim can be read for width and/or height. Again there is nothing in the claim language to limit the number of pixel to be the number of pixels in the area.</u>

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.

13. ☐ Other: _____.

YON J. COUSO
PRIMARY EXAMINER

Continuation Sheet (PTOL-303)

Application No.

U.S. Patent and Trademark Office
PTOL-303 (Rev. 4-05)

Advisory Action Before the Filing of an Appeal Brief

Part of Paper No. 20050713